

(2003) 06 GAU CK 0019

Gauhati High Court

Case No: WP (C) No. 7266 of 2002

Aminul Hoque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: June 12, 2003

Acts Referred:

- Assam Aided Colleges Employees Rules, 1960 - Rule 4
- Assam Education Department Selection Rules, 1981 - Rule 10, 11

Citation: (2003) 3 GLR 434 : (2003) 3 GLT 611

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Advocate: G. Uzir, M. Ahmed, S.K. Medhi and B. Sinha, for the Appellant; B. Banerjee, G.A., for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, J.

The principal, Darrang College, Tezpur by an advertisement dated 18.5.2002 invited applications for appointment to the post of Lecturers in various subjects including Botany. The advertisement specifies that the candidate must have UGC norms with brilliant academic carrier with specialization in Mycology and Plant Pathology. The petitioner applied for the post of Lecturer of Botany. The petitioner along with others were interviewed by the Selection Committee on 13.7.2002. The Selection Board prepared a list of three successful candidates and the petitioner was the second nominee. The Governing Body of the College met on 17.8.2002 and decided to appoint the petitioner as he has all the requisite qualifications for appointment as Lecturer in Botany to the exclusion of the first nominee, the Respondent No. 4. The Principal of the College issued appointment letter dated 29.8.2002 in favour of the petitioner and vide letter dated 27.9.2002 requested the Director of Higher Education to accord approval of the appointment. The Director, in turn, refused to accord approval apparently on the ground that the writ petitioner was second in

order of merit in the list prepared by the Selection Board. Hence, this petition.

2. Shri Phatik Tamuli, the first nominee was impleaded as Respondent No. 4 on his prayer made in Miscellaneous Case No. 57 of 2003.

3. Annexure - D, attached with the writ petition, is the report of the Selection Board. From this, it is apparent that the writ petitioner stood second while the Respondent No. 4 stood first in order of merit. Annexure-F is the letter dated 27.9.2002 written by the Principal to the Director of Higher Education requesting for approval of the appointment of the writ petitioner as per Governing Body's resolution. Along with this letter, the Principal had annexed a copy of the relevant resolution adopted by the Governing Body against item No. 2. The reasons for ignoring the claim of the Respondent No. 4, the first nominee, may be read in the words of the Governing Body. The same is quoted hereinbelow :-

"The members examined the panel of selected candidates for appointment of lecturer in Botany (Specialisation in Mycology and Plant Pathology) prepared by the Selection Committee on the basis of interview held on 13.7.2002 and other papers of the interview decided to appoint Sri Aminul Haque, place in the second position. As the consolidated statement of marks obtained by the candidate's shows, there is difference of only one mark between the overall performance of the candidate No. 1 and that of the candidate No. 2 candidate no. 1 has got 51 marks out of 100 marks and candidate No. 2 has got 50 marks out of 100 marks. The difference is very marginal. Moreover, the academic background of the candidate placed in position 1. Besides the candidate in position 2 is an ex-student of the college and he has produced a certificate from H/D of Botany, GU, stating that he had offered "Mycology and Plant Pathology", as special paper, which is an essential qualification for the Post.

In view of the above points, the members unanimously decided to appoint Sri Aminul Hoque as lecturer in Botany and resolved as follows.

Res. No. 2002/04/02/(b) resolved that Sri Aminul Haque placed on the second position of the panel of candidates selected for appointment of Lecturer in Botany prepared by the Selection Committee on the basis of the interview held on 13.7.2002 be appointed Lecturer in Botany to fill up the vacancy caused by the retirement on superannuation of Smti. Monica Mech. H/D of Botany on 28/2/2002. A.N."

4. The reasons given by the Governing Board, as quoted above, do not augur well with the principles of law. When the Selection Board consisting of experts have prepared a panel after interview on merit, the same cannot be lightly tinkered with by the Governing Board, except for good reasons to be recorded in writing. The Respondent No. 4 secured 51 marks and the writ petitioner secured 50 marks. The marginal difference in the marks secured cannot be availed of by the Governing Body to recast the list. How does the academic background of the writ petitioner is distinguishable from that of the Respondent No. 4 have also not been spelt out in

the resolution.

5. In this context, we may examine the records produced by the learned Counsel for the Governing Board. The records disclose that the Respondent No. 4 lodged a complaint with the Director of Higher Education alleging discrimination by the Governing Board. The Deputy Director of Higher Education, Assam, forwarded a copy of the said complaint to the Principal for placing the matter before the Governing Body for necessary action. It is not known whether the said complaint was placed before the Governing Body or not. The affidavit of the Principal does not disclose anything more than what is recorded by the Governing Body in their resolution. The records do not contain any comparative statement of the academic background of the two candidates. However, it appears that the Respondent No. 4 passed his M.Sc. in 1997 with Mycology and Plant Pathology as a subject and also obtained Ph.D Degree in Microbial ecology from Dibrugarh University. Otherwise, the academic career of the two candidates are almost at par. It is, perhaps, for the doctorate decree as well as performance in the interview, the Selection Board recommended the Respondent No. 4 as the first nominee. This Court is not authorised by law to review the decision of the Selection Board which consisted of as many as five experts.

6. Mr. Gautam Uzir, learned counsel for the petitioner argued that Rule 4(iv) empowers the Governing Body to appoint any candidate from the approved list after proper verification of the character and antecedent with the prior approval of the Director of Public Instructions. This submission is contrary to the established principles of service jurisprudence. The aforesaid Rule 4(iv) of the Assam Aided College Employees Rules, 1960 was substituted by the notification No. ECL. 110/69/125 dated 28th August, 1973. The substituted Rule 4(iv) reads as follows :

"(iv) The Governing Body shall make appointment after necessary verification, with prior approval of the Director of Public Instruction, Assam."

7. It appears that the earlier provision providing wide powers to the Governing Body in the matter of appointment have been abridged by the amendment of 1973. However, Mr. Uzir, submitted that the Assam Education Department Selection Rules, 1981 prescribe the mode for constitution of the Selection Board, the method of interview and written test, publication of selection list and appointment. Rules 10 and 11, relevant for the purpose of the case at hand, are quoted below :-

"10. Publication of Selection list-(1) The Selection Board shall prepare lists of selected candidates for Lecturers and Principals numbering at least three times of the existing vacancies and shall forward the list so prepared to the Government. The Government may approve of the list so prepared by the Selection Board after proper verification of the character and antecedents and publish these lists in the official Gazette. The list of Lecturers should be published subject-wise and the Director of Higher Education shall forward the list of candidates for Principals and Lecturers,

approved by the Government to the Governing Bodies of Aided Colleges Note :....".

"11. Appointment - On publication of the result, the concerning appointing authorities shall make appointments only from among the candidates included in the list.".

8. The question is, whether a Governing Body is competent to deviate from the merit list. The Division Bench of this Court in Amit Sharma Vs. Jyotishmoy Bora and Others, dealt with the question and held as follows :-

"3. Really speaking, it is the job of the Selection Committee to select the best person available who has fulfilled the requisite qualifications and unless there is something palpably wrong in the selection, the Governing Body cannot sit over the judgment of the expert Selection Committee to say that in fact another candidate was better than the one selection, or one is more meritorious than the other. The Selection Committee is supposed to have considered all the materials which is available along with the applications of the candidates.

7. It will be seen from paragraph 6 (supra) that for preferring the appellant, the Governing Body has stated that it was because of his experience in GIS application, Computer Software and his vast experience in teaching that the Governing Body preferred him over the writ petitioner (now respondent No. 1). We cannot imagine that this fact was not taken into consideration by the Selection Committee while putting the respondent No. 1 (writ petitioner) at Sl. No. 1 of the merit list. On the grounds mentioned in paragraph 6 (supra), we are not satisfied that this was sufficient material to tinker with the selection made by the expert Selection Committee. The Selection Committee is formed with persons who know the subject, whereas it may not be so amongst the members of the Governing Body. Normally the Governing Body should repose faith in its Selection Committee.".

9. The decision above, clearly indicates that the Governing Body is not permitted to tinker with the merit list prepared by the Selection Board except for good reasons to be recorded in writing. Shri Uzir, learned counsel for the petitioner placed a common judgment of the learned Single Judge in Civil Rule No. 298 of 1993 and Civil Rule No. 808 of 1993 (between Shri Monmohan Das & Dr. Munindra Nath Borgain v. State of Assam and others reported in 1994 (1) GLJ 280). The factual matrix of this judgment do not suit in with the fact s and circumstances of the case at hand. This Court, as a matter of propriety, is required to follow the Division Bench's judgment in Amit Sharma (supra). The Division Bench has made it clear that the recommendation of the Selection Board is to be honoured. The scanty reasons available in the resolution of the Governing Body do not inspire this Court to come to the conclusion that the reasons justify over-ruling of the merit-list prepared by the Selection Board. The proposition advanced on behalf of the writ petitioner that the Governing Body has absolute powers to appoint anyone from the select list in deviation of the order of merit will render the very process of selection, envisaged

under the rule, a futile exercise. The Director of Higher Education, appears to have rightly refused to accord approval to the proposal of the Governing Body for appointment of the writ petitioner in negation of the legitimate claim of the Respondent No. 4. The petitioner is, therefore, not entitled to any relief.

10. In the result, the writ petition is dismissed. The Governing Board is to comply with the decision of the Director of Higher Education, Assam in the interest of the institution. Consequently the connected miscellaneous Case Nos. 100 of 2003, 220 of 2003 and 372 of 2003 are also disposed of.

No costs.